



This document is scheduled to be published in the Federal Register on 08/21/2012 and available online at <http://federalregister.gov/a/2012-20479>, and on FDsys.gov

Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2012-N181; FXES11120100000F2-123-FF01E00000]

Proposed Safe Harbor Agreement for the Northern Spotted Owl, Skamania, Klickitat, and Yakima Counties, WA, and Hood River and Wasco Counties, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: SDS Company LLC (SDS) and the Broughton Lumber Company (BLC), hereafter referred to as the applicants, have applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit (permit) under the Endangered Species Act of 1973, as amended (ESA). The permit application includes a draft Safe Harbor Agreement (SHA) and a draft Implementing Agreement (IA). Pursuant to the Service's responsibility to comply with the National Environmental Policy Act (NEPA), the application package also includes a draft Environmental Assessment (EA). The Service invites the public to review and comment on the draft SHA, the draft IA, and draft EA.

DATES: To ensure consideration, please send your written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may download copies of the draft SHA, draft IA, and draft EA and obtain additional information on the Internet at <http://www.fws.gov/westwafwo/>. You may submit comments or requests for more information by any of the following methods. You may request hard copies or a CD-ROM of the documents.

- *Email:* SDSBLCSHA@fws.gov. Include “SDS BLC SHA” in the subject line of the message.
- *U.S. Mail:* Mark Ostwald, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Southeast, Suite 102, Lacey, WA 98503.
- *In-Person Drop-off, Viewing, or Pickup:* Call (360) 753–9440 to make an appointment (necessary for view/pickup only) during regular business hours at Washington Fish and Wildlife Office, 510 Desmond Drive, Southeast, Suite 102, Lacey, WA 98503.

FOR FURTHER INFORMATION CONTACT: Mark Ostwald, U.S. Fish and Wildlife Service (see **ADDRESSES**), telephone (360) 753–9564. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The applicants have applied to the Service for an enhancement of survival permit under section 10(a)(1)(A) of the ESA (16 U.S.C. 1531

et seq.). The permit application includes a draft SHA, draft IA, and draft EA.

The SHA covers about 81,587 acres of managed private forest lands in Washington and Oregon. The proposed term of the permit and the SHA is 60 years. The permit would authorize incidental take of the threatened northern spotted owl (*Strix occidentalis caurina*) at a level that enables the applicants ultimately to return the enrolled property back to agreed-upon baseline conditions. The permit would also authorize incidental take of the spotted owl as a result of management activities during the term of the permit.

Approximately 16,031 acres of the forest lands covered under the proposed SHA, inclusive of baseline habitat acres, have also been proposed by the Service as critical habitat for the spotted owl (77 FR 14062; March 8, 2012). These lands are being considered for exclusion from the final critical habitat designation based on the anticipated conservation benefits of this SHA (if it is approved) and economic or other relevant factors.

Background

Under a SHA, participating property owners voluntarily undertake management activities to enhance, restore, or maintain habitat benefiting species listed under the ESA. SHAs are intended to encourage private and other non-Federal property owners to implement conservation actions for listed species by assuring the participating property

owners that they will not be subject to increased property use restrictions as a result of increasing the abundance of covered (listed) species due to their efforts to improve conditions for covered species on their property. When a participating landowner meets all the terms of an approved SHA, the Service authorizes incidental taking of the covered species at a level that enables the property owner ultimately to return the enrolled property back to agreed-upon baseline conditions. Such authorization is provided under a permit issued pursuant to the provisions of section 10(a)(1)(A) of the ESA.

For an applicant to receive a permit through a SHA, the applicant must submit an application form that includes the following:

1. The common and scientific names of the listed species for which the applicant requests incidental take authorization;
2. A description of how incidental take of the listed species pursuant to the SHA is likely to occur, both as a result of management activities and as a result of the return to baseline; and
3. A SHA that complies with the requirements of the Service's Safe Harbor policy.

The issuance criteria for a permit are as follows:

1. The take of listed species will be incidental to an otherwise lawful activity and will be in accordance with the term of the SHA;
2. The implementation of the terms of the SHA is reasonably expected to provide a net conservation benefit to the covered species by contributing to its

recovery, and the SHA otherwise complies with the Service's Safe Harbor policy;

3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;
4. Implementation of the terms of the SHA is consistent with applicable Federal, State, and Tribal laws and regulations;
5. Implementation of the terms of the SHA will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and
6. The applicant has shown capability for and commitment to implementing all of the terms of the SHA.

The Service's Safe Harbor policy (64 FR 32717; June 17, 1999) and Safe Harbor regulations (September 10, 2003, 68 FR 53320; May 3, 2004, 69 FR 24084) provide important terms and concepts for developing SHAs. The Service's Safe Harbor policy and regulations are available at:

<http://www.fws.gov/endangered/laws-policies/regulations-and-policies.html>.

Spotted Owl Special Emphasis Areas

In Washington State, ten Spotted Owl Special Emphasis Areas (SOSEAs) have been established under Washington Forest Practices Rules (WAC 222-16-086) to provide

for the conservation needs of the spotted owl. Each SOSEA includes land area goals for spotted owl demographic and dispersal support. Different SOSEAs have different biological goals for spotted owls, depending on the geographic location of the SOSEA and the conservation needs of the spotted owl. The covered lands under the proposed SHA include portions of the White Salmon and the Columbia Gorge SOSEAs.

Under Washington Forest Practices Rules, the following amounts of suitable habitat are generally assumed to be necessary to maintain the viability of each spotted owl site center within each SOSEA in the absence of more specific data or a mitigation plan: (a) all suitable spotted owl habitat within 0.7 miles of each spotted owl site center; and (b) a total of 2,605 acres of suitable spotted owl habitat within the median home range circle with a radius of 1.8 miles. Under Washington Forest Practices Rules, proposed forest practices likely to adversely affect spotted owl habitat in either category (a) or (b) above are likely to have significant adverse impacts on the spotted owl, and such activities would require a Class IV special forest practice authorization and an environmental impact statement per the State Environmental Policy Act (SEPA), and likely require an incidental take permit (ITP) under section 10(a)(1)(B) of the ESA.

Outside of SOSEAs, 70 acres of the highest quality suitable spotted owl habitat surrounding a spotted owl site center should be maintained during the nesting season in accordance with Washington Forest Practices Rules (WAC 222-10-041 (5)). Washington Forest Practices Rules also provide for exceptions to operating under the above standard rules. These exceptions include conducting forest management operations under a

Service-approved habitat conservation plan and an ITP authorized under section 10(a)(1)(B) of the ESA or a SHA and a permit authorized under section 10(a)(1)(A) of the ESA.

Under Washington Forest Practices Rules, spotted owl habitat is categorized as follows: (1) “Old forest habitat,” which provides all of the characteristics of spotted owl nesting, roosting, foraging, and dispersal habitat; (2) “sub-mature habitat,” which provides all of the characteristics of spotted owl roosting, foraging, and dispersal habitat; (3) “young forest marginal habitat,” which provides some of the characteristics of spotted owl roosting, foraging, and dispersal habitat; and (4) “dispersal habitat,” which is not considered suitable for spotted owl nesting, roosting, or foraging, but does provide for spotted owl dispersal (WAC 222-16-085). The proposed SHA relies on these habitat definitions.

Oregon Forest Protection Act

In Oregon, the Oregon Forest Protection Act (OFPA) protects resource sites through a notification process, but the State Forester does not issue permits or approvals. The OFPA protects active spotted owl nesting sites or activity centers occupied by a pair of adult owls capable of breeding by providing for a 70-acre core habitat area around the nest site. The State Forester is required to maintain an inventory of protected resource sites that are used by threatened and endangered species, including the spotted owl. A written plan is required when the State Forester determines a proposed forest

management operation will conflict with the protection of a spotted owl nesting site or when the forest management operation is within 300 feet from any nesting site of any threatened or endangered species.

Proposed Action

The applicants have submitted a draft SHA for the spotted owl that covers approximately 81,587 acres of managed private forest lands in portions of Skamania, Klickitat, and Yakima Counties in Washington, and in portions of Hood River and Wasco Counties in Oregon. All of the covered lands are east of the crest of the Cascade Mountains. The majority of the covered lands have been previously managed, and about 75 percent are younger than 80 years old. The SHA also includes provisions for adding and subtracting lands to the covered area.

The WDNR has mapped spotted owl habitat under Washington Forest Practices Rules only within the 1.8-mile radius home range circle around spotted owl sites within SOSEAs. For purposes of this SHA, the applicants have used the WDNR's spotted owl habitat information whenever possible. However, outside of the SOSEAs and within the SOSEAs, but outside of the 1.8-mile-radius circles, the applicants have used and will continue to use stand age to estimate spotted owl habitat acreage.

In preparing the SHA, SDS hired a contractor to determine what forest age was likely to represent "young forest marginal habitat" on the covered lands. The results of

this study indicate that while some stands younger than age 60 achieved “young forest marginal habitat” characteristics, at age 60 and older the chance of achieving “young forest marginal habitat” was highly likely. On that basis, forest stands on the SHA-covered lands that are age 60 or older will be considered to meet the definition of “young forest marginal habitat.” Forest stands younger than 60 years may also be considered to meet the definition of “young forest marginal habitat,” if the conditions associated with that habitat are verified by surveys using appropriate methods or forest stands are actively managed in a manner that is likely to achieve that outcome by applying specific habitat enhancements. The Service recognizes that the age of a forest stand is one of many ways to describe spotted owl habitat, and while it may not be as precise as some other approaches, with the forest inventory information available for the lands covered under the proposed SHA, it is a reasonable estimate.

Current Conditions in Washington

Survey data for spotted owl site centers on or near the applicants’ covered lands suggest that very few of these sites are occupied, or possibly that spotted owls are not responding to traditional survey methods. As of 2011, only one site, within the White Salmon SOSEA, is known to contain a spotted owl pair (T. Fleming, National Council for Stream and Air Improvement, Inc., pers comm.); however, several sites have not been regularly surveyed in recent years. About 62,434 acres, or 77 percent, of SHA-covered lands occur in Washington. Approximately 34,064 acres, or 42 percent, of the SHA-covered lands in Washington occur within the Columbia Gorge and White Salmon

SOSEAs. Under Washington Forest Practices Rules, the biological goal of both the Columbia Gorge and White Salmon SOSEAs is to provide for spotted owl dispersal and demographic support by maintaining spotted owl habitat to protect the viability of the owl(s) associated with each spotted owl site center or by providing a variety of habitat conditions that support spotted owl dispersal, foraging, and roosting activities.

Within the Columbia Gorge SOSEA, the covered lands intersect the 1.8-mile radius home range circle of four spotted owl sites. Within the White Salmon SOSEA, the covered lands intersect the 1.8-mile home range radius circle of 14 spotted owl sites. Within these two SOSEAs, the covered lands intersect the 0.7-mile radius home range circle of 8 of the 18 total spotted owl sites. Of these spotted owl sites, only one owl site center is located on the covered lands (in the White Salmon SOSEA).

In the White Salmon SOSEA, the WDNR has identified 3,694 acres of the applicants' covered lands (741 acres of "sub-mature habitat" and 2,953 acres of "young forest marginal habitat") as part of the highest quality spotted owl habitat within the 1.8-mile-radius home range circles of 14 spotted owl site centers.

In the Columbia Gorge SOSEA, the WDNR has not identified the highest quality habitat acres; however, the WDNR has identified 313 acres of "sub-mature habitat" and 690 acres of "young forest marginal habitat" occurring on the covered lands within 1.8 miles of the four spotted owl site centers in this SOSEA. Whether or not 1,003 acres of habitat within 1.8 miles of these four site centers is the highest quality habitat, the

applicants are treating them as such for purposes of establishing the spotted owl habitat baseline acres for this SHA.

The applicants have used the total of the above spotted owl habitat acreages (4,697 acres) within these two SOSEAs to define the spotted owl habitat baseline for this SHA on the basis that absent this SHA and permit, if these 4,697 acres of habitat were proposed for timber harvest, the applicants would need to file an application for a class IV special forest practices permit, prepare a SEPA environmental impact statement, and also likely obtain an ITP under the ESA from the Service. Conversely, all other acres of spotted owl habitat currently existing on the covered lands were excluded from the baseline on the basis that the proposed harvest of these forest stands would not require a Class IV special forest practice permit, a SEPA environmental impact statement, or an ITP under the ESA. See the SHA for a full description of the baseline and spotted owl habitat current conditions on the covered lands. However, for purposes of this SHA, the applicants and the Service have agreed upon a higher baseline of 9,424 acres (651 acres of submature habitat, 4,061 acres of young forest marginal habitat, and 4,712 acres of dispersal habitat).

Current Conditions in Oregon

Approximately 19,153 acres or 23 percent of SHA-covered lands occur in Oregon. There are no spotted owl site centers on the covered lands in Oregon, thus, there are no harvest restrictions under the OFPA. Since the covered lands in Oregon are not

known to intersect a spotted owl 70-acre core, the spotted owl habitat baseline for covered lands in Oregon is considered as 0 acres in the proposed SHA because there are no timber harvest restrictions under the OFPA. There are six spotted owl sites on National Forest lands in proximity to the covered lands. However, none of the 70-acre cores around these sites intersect the covered lands. It is unlikely that timber harvest activities on the covered lands would require an ITP under the ESA.

Spotted Owl Conservation under the SHA

The applicants have worked closely with the Service to develop their proposed SHA and the voluntary conservation measures that are expected to provide a net conservation benefit to the spotted owl. The Service and the applicants have agreed upon baseline conditions that will provide a net benefit to the spotted owl above the level that would occur by managing the current habitat conditions without the SHA. Under the applicants' proposed SHA, spotted owl habitat on the covered lands would be managed at scales other than the 1.8-mile radius home range circles within each of the two SOSEAs on the covered lands in Washington. Under this approach, the distribution of spotted owl habitat will not remain static on the covered lands for the duration of the SHA. Instead, the SHA provides for a wider distribution of spotted owl habitat across the covered lands, both inside and outside of the SOSEAs, by leaving habitat on the landscape longer, increasing the timber harvest rotation interval from 45 to 60 years and other habitat enhancements provided by active management.

While SDS and BLC lands intersect a number of spotted owl territories, the WDNR and the Gifford Pinchot National Forest are the majority landowners within these spotted owl territories. The SHA has been developed to manage for spotted owl conservation at a broader scale, similar to that applied by the WDNR and the Gifford Pinchot National Forest. Under this approach, the distribution of spotted owl habitat on the covered lands is intended to be dynamic, shifting across the covered lands over the proposed 60-year duration of the SHA.

Although the baseline condition for spotted owl habitat within the White Salmon SOSEA is 3,694 acres, with implementation of the SHA, a higher baseline of 9,424 acres of spotted owl habitat, consisting of a minimum of 651 acres of “sub-mature habitat,” 4,061 acres of “young forest marginal habitat,” and 4,712 acres of “dispersal habitat” will be maintained within the White Salmon SOSEA for the duration of the SHA. This amount represents a minimum of 5,730 acres of spotted owl habitat above the current conditions of 3,694 acres. Absent this SHA, forest stands on those 5,730 acres would be subject to timber harvest.

At the landscape (i.e., covered lands) scale, the applicants intend to manage the covered lands to provide as much as an additional 12,705 acres of spotted owl “dispersal habitat” and “young forest marginal habitat” during the proposed 60-year term of the SHA by managing existing forest stands at a 60-year, rather than the current 45-year, harvest rotation interval. However, in some periods during the term of the SHA some of these 12,705 acres may be degraded by disease, windthrow, or fire.

Over the proposed 60-year term of the SHA, spotted owl non-habitat will be allowed to develop into spotted owl habitat within the White Salmon SOSEA. Absent this SHA, that habitat development would not occur under current requirements of Washington Forest Practices Rules or the ESA. In the White Salmon SOSEA, 490 acres of forest within 0.7 miles of spotted owl site centers will be allowed to develop into “young forest marginal habitat” and “dispersal habitat.” Approximately 8,382 acres of forest in both SOSEAs outside the 0.7-mile radius circle but within the 1.8-mile radius circle around spotted owl site centers will be allowed to develop into “young forest marginal habitat” and “dispersal habitat” under the SHA. By taking a proactive approach, the applicants will conduct commercial thinning operations, with implementation of their snag retention and creation program, to enhance spotted owl habitat development on the covered lands. Over the first decade of implementing the proposed SHA, within the White Salmon SOSEA, the applicants will thin a minimum of 500 acres of forest to accelerate its development into “young forest marginal habitat” to provide for some of the characteristics of spotted owl roosting and foraging habitat.

Under the SHA, the applicants have proposed the following measures to provide a net conservation benefit to the spotted owl: (1) maintain 33 percent of their collective ownership within the White Salmon SOSEA, or about 9,424 acres, in spotted owl habitat (16.5 percent in “dispersal habitat” and 16.5 percent in “young forest marginal habitat” or better habitat); (2) maintain 33 percent of their collective ownership in “young forest marginal habitat” or better habitat within 0.7 miles of spotted owl site centers located

within the White Salmon SOSEA; (3) maintain existing spotted owl habitat on covered lands within the 0.7-mile-radius circles around four spotted owl sites where the applicants have more than 15 percent ownership by deferring any habitat removal for 10 years; (4) manage for an average 60-year timber harvest rotation interval inside and outside of the SOSEAs that is expected to create more spotted owl “dispersal habitat” and “young forest marginal habitat” across the landscape; (5) provide two habitat set-aside reserves on the covered lands for the term of the SHA: one reserve of approximately 411 acres of spotted owl habitat along the Little White Salmon River and a second reserve of approximately 240 acres of spotted owl habitat around the one spotted owl nest site center on the covered lands; (6) implement a wildlife tree and snag management program that will provide more snags and green trees than required under Washington Forest Practices Rules to improve habitat for spotted owl prey species; (7) not pursue spotted owl circle decertification which, if approved, would remove protections for spotted owl sites under current Washington Forest Practices Rules; and (8) allow spotted owl non-habitat to grow into spotted owl habitat near spotted owl site centers, and accelerate suitable habitat development through active forest management such as commercial thinning. For a full description of the conservation program, see the proposed SHA.

National Environmental Policy Act Compliance

The development of the draft SHA and the proposed issuance of an enhancement of survival permit is a Federal action that triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*)

(NEPA). We have prepared a draft EA to analyze the impacts of permit issuance and implementation of the SHA on the human environment in comparison to the no-action alternative.

Public Comments

You may submit your comments and materials by one of the methods listed in the ADDRESSES section. We request data, new information, or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested party on our proposed Federal action. In particular, we request information and comments regarding the following issues:

1. The direct, indirect, and cumulative effects that implementation of the SHA or any alternatives could have on endangered and threatened species;
2. Other reasonable alternatives consistent with the purpose of the proposed SHA as described above, and their associated effects;
3. Measures that would minimize and mitigate potentially adverse effects of the proposed action;
4. Identification of any impacts on the human environment that should have been analyzed in the draft EA pursuant to NEPA;
5. Other plans or projects that might be relevant to this action;
6. The proposed term of the Enhancement of Survival Permit and whether the proposed SHA would provide a net conservation benefit to the covered species; and

7. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All comments received from organizations, businesses, or individuals representing organizations or businesses are available for public inspection in their entirety. Comments and materials we receive will be available for public inspection by appointment, during normal business hours, at our office (see **ADDRESSES**).

Next Steps

The Service will evaluate the permit application, associated documents, and public comments submitted thereon to determine whether the permit application meets the requirements of section 10(a)(1)(A) of the ESA and NEPA regulations. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all comments received during the comment

period. If we determine that all requirements are met, we will sign the SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to the Applicants for the take of northern spotted owl, incidental to otherwise lawful activities in accordance with terms of the SHA and IA.

Authority

We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR 1506.6).

Dated: __August 7, 2012

Cynthia U. Barry,
Acting Deputy Regional Director,
Pacific Region, U.S. Fish and Wildlife Service,
Portland, Oregon.

